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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/667,889      | 09/23/2003  | Martin Windorfer     | 028987.52516US      | 8638             |

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CROWELL & MORING LLP  
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| EXAMINER |
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CORDRAY, DENNIS R

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

1731

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 02/08/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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**Office Action Summary**

Application No.

10/667,889

Applicant(s)

WINDORFER ET AL.

Examiner

Dennis Cordray

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 is/are allowed.
- 6) ☒ Claim(s) 12-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br/>Paper No(s)/Mail Date _____</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)<br/>Paper No(s)/Mail Date. _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application</p> <p>6) <input type="checkbox"/> Other: _____</p> |
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## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments, filed 11/15/2006, with respect to the rejections of Claims 1, 3, 4, 6, 8, 11, and 13-14 under 35 U.S.C. 102(b) have been fully considered and are persuasive. The rejection of has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as detailed below.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2, 7 and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 2 recites the newly added limitation that "the spring force is initially greater during movement of the ashtray into the opening position than during subsequent movement of the ashtray into the closed position." The Specification, p 10, par 27, states that the spring force is initially greater out of the operative position (out of the open position) than during subsequent movement of the ashtray into the closed

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position, which appears to teach the opposite of the amended claim. Thus, the amended claim specifies a limitation unsupported by the originally filed Application.

Claim 7 recites a newly added limitation similar to that of Claim 2.

Claim 12 recites the newly added limitation that "the spring force is initially greater during movement of the ashtray out of the housing than during the subsequent movement of the ashtray into the closed position", which is an alternative statement of the same new limitation recited in Claims 2 and 7.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kuhar (5482100).

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Claim 12 is directed to a spring having a varying force constant. The recitation of the use of the spring in a vehicle ashtray does not limit the structure of the spring itself, but merely discusses an intended use for the spring.

Kuhar discloses a variable force spring (col 4, lines 40-41; col 5, lines 8-12; Figs 4a, and 4b) having a narrow end and a wide end and a hole in one end for coupling. The wider end has a larger force constant than the narrow end. The spring of Kuhar can be used in the indicated location of the ashtray of the instant invention and can perform a similar function of providing a greater force during movement of the ashtray out of the operative position than during subsequent movement into the closed position or, at least, it would have been obvious to one of ordinary skill in the art that the spring would perform in the manner claimed. The spring of Kuhar is a band type flat coil spring. Figure 4b shows the end of the spring having the hole (end side holding section) having a curvature, and thus a bending radius, while a following portion is linear (has an infinite bending radius that is larger than the curved radius). An alternative method of changing the cross sectional area of the band to provide a variable force constant is to use a spring of constant width which varies in thickness (col 5, lines 23-27; Figs 5a and 5b).

Claim 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Kuhar in view of Whitehead, Jr (2930390).

Kuhar does not disclose a punched out section of the spring spaced from the end side holding section.

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Whitehead, Jr discloses a variable force band type spring having either a tapered slot (punched out section) to provide a decreased longitudinal cross sectional area and thus a decreased force constant. An alternative method of providing a variable force is to have multiple uniform elongated slots (col 2, lines 68-72; col 5, line 64 to col 6, line 36; Figs 1 and 6).

The art of Kuhar, Whitehead, Jr and the instant invention is analogous as pertaining to variable force band type springs. It would have been obvious to one of ordinary skill in the art to use one or more slots in the spring of Kuhar in view of Whitehead, Jr as an alternative and functionally equivalent method of providing a variable force band type spring. The variable force band type spring of Kuhar in view of Whitehead, Jr can be used in the indicated location of the ashtray of the instant invention and can perform a similar function of providing a greater force during movement of the ashtray out of the operative position than during subsequent movement into the closed position or, at least, it would have been obvious to one of ordinary skill in the art that the spring would perform in the manner claimed.

#### ***Allowable Subject Matter***

Claims 1-10 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The closest prior art, Plocher et al (DE 19653302 A1, English translation used), discloses a built in ashtray having the general structure as claimed and including a lever

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mechanism for locking the ashtray when it is pushed out of the housing so that the cigarette lighter can be inserted into its holder without displacing the holder (p 2, 1<sup>st</sup> par).

The instant invention has no locking mechanism, but instead uses a spring having a spring force acting on the ashtray, when it is pushed out of the housing, that is greater than the opposing force due to inserting the lighter in its holder. The lever mechanism of Plocher et al creates a different operational mechanism from the instant invention and cannot be modified to make the instant invention without destroying its mode of operation.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Cordray whose telephone number is 571-272-8244. The examiner can normally be reached on M - F, 7:30 -4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*DRC*

DRC

*John P. Miller*  
912, Art Unit 1731